

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants:	Matthew Barrow, et al.	§	
		§	Group Art Unit: 2157
Serial No.:	10/086,099	§	
		§	Examiner: Sall, El Hadji Malick
Filed:	February 28, 2002	§	
		§	Confirmation No.: 2736
For:	DYNAMICALLY UPDATEABLE PARAMETERS	§	
	IN INTEGRATED SERVICES HUB	§	

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APPEAL BRIEF

Dear Sirs:

This Appeal Brief is filed in support for the appeal in the above referenced application and is filed pursuant to the Notice of Appeal filed November 1, 2007. Appellants authorize all required fees under 37 C.F.R. § 1.17 to be charged to Deposit Account No. 21-0765, of Sprint Communications Company, L.P.

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I. REAL PARTY IN INTEREST

The real party in interest in the present application is the following party: Sprint Communications Company, L.P.

II. RELATED APPEALS AND INTERFERENCES

None.

III. STATUS OF CLAIMS

A. Total Number of Claims in the Application

The claims in the application are: 1-12

B. Status of All Claims in the Application

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-12
4. Claims allowed: None
5. Claims rejected: 1-12

C. Claims on Appeal

The claims on appeal are: 1-12

IV. STATUS OF AMENDMENTS

Claim 1 was amended to correct a typographical error in the Response to Final Office Action dated August 31, 2007. The Advisory Action dated September 20, 2007 indicated that for the purposes of appeal, the proposed amendment will be entered.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The pending claims are directed to dynamically updating parameters in a configuration file. *See, e.g.*, Application at 2, ¶ [0001], lines 1-3.¹ The parameters in the configuration file are used by functional modules in a customer premises telecommunications hub. *See, e.g.*, Application at 15, ¶ [0034], line 1- Application at 16, ¶ [0034], line 1. The functional modules of the customer premises telecommunications hub may include a POTS control module 51, a polling control module 52, a configuration update module 53, a power supply control module 83, an Ethernet control module 67, and an ATM control module 55, for example. *See, e.g.*, Application at 9, ¶ [0016], lines 8-15. The parameters in the configuration file may be changed by rebooting the hub. *See, e.g.*, Application at 16, ¶ [0034], lines 6-7. Because rebooting may require action to be taken at the location of the hub or may interrupt operation of the hub, the parameters are dynamically updated, if possible, without rebooting the hub. *See, e.g.*, Application at 16, ¶ [0034], lines 8-11.

Upon the hub receiving and storing an updated configuration file, a process is run for checking whether parameters in the updated configuration file have changed, and if so whether they can all be changed dynamically or if a reboot is required for changing them. *See, e.g.*, Application at 17, ¶ [0036], line 3 - Application at 18, ¶ [0038], line 5. If all of the parameters that have been changed can be changed dynamically, then they are updated dynamically. *See, e.g.*, Application at 18, ¶ [0039], lines 1-5. Otherwise, the hub is rebooted. *See, e.g.*, Application at 18, ¶ [0038], lines 5-7. It is preferred that dynamically updating the parameters or

¹ 37 C.F.R. § 41.37 (c)(1)(v) provides that the “[s]ummary of claimed subject matter . . . shall refer to the specification by page and line number.” The instant application was presented in numbered page and numbered paragraph form. As such, the citations to the specification support for the claimed subject matter will be presented in the following form: Application at ____ (page number), ¶ [____] (paragraph number), lines ____ (lines within the corresponding paragraph).

rebooting the customer premises telecommunications hub is deferred until the customer premises telecommunications hub is in an idle state. *See, e.g.*, Application at 18, ¶ [0040], line 1 - Application at 19, ¶ [0041], line 6.

An update module 53 may sequentially call a “check” function at the functional modules of the hub. *See, e.g.*, Application at 17, ¶ [0036], lines 14-15 and Application at 18, ¶ [0038], lines 1-7. The check function is the process of checking a new parameter against an old parameter and determining whether the parameter is different and if so whether it can be changed dynamically or requires a reboot for changing. *See, e.g.*, Application at 17, ¶ [0037], lines 2-7. Each functional module of the hub may perform the check function to determine whether any parameters that affect the functional module have been changed. *See, e.g.*, Application at 17, ¶ [0037], lines 2-5. For each parameter that has been changed the check function further determines whether the parameter can be changed dynamically or requires a reboot of the hub. *See, e.g.*, Application at 17, ¶ [0037], line 5-8.

If the check function determines that none of the functional parameters that have been changed require a reboot of the hub, then the update module 53 may call an “update” function at the functional modules. *See, e.g.*, Application at 18, ¶ [0039], lines 1-2. The update function is the process of storing a local copy of the new parameters and operating with the new parameters. *See, e.g.*, Application at 17, ¶ [0037], lines 2-5. Each functional module of the hub may perform the update function by reading the configuration parameters from the configuration file, storing a local copy of the new parameters, and operating with the new parameters. *Id.* Otherwise a reboot is needed to update the functional modules with the changed parameters in the configuration file. *See, e.g.*, Application at 18, ¶ [0038], lines 5-7.

On the occasion when the pertinent paragraph is contained on multiple pages, the paragraph line numbering will begin anew on subsequent pages.

Claim 1 is independent and is directed to a method for updating configuration parameters in customer premises telecommunications hub comprising: receiving in a customer premises telecommunications hub a new configuration file sent from a remote location, *See, e.g.*, Application at 17, ¶ [0036], lines 2-10; identifying parameters in the new configuration file which are different than existing parameters stored in said customer premises telecommunications hub, *See, e.g.*, Application at 17, ¶ [0037], lines 2-5; checking the parameters which are different to determine whether they can be changed dynamically, *See, e.g.*, Application at 17, ¶ [0037], lines 5-8, and if all parameters which are different can be dynamically changed, updating all parameters to those contained in the new configuration file without rebooting, *See, e.g.*, Application at 18, ¶ [0037], line 1 - Application at 18, ¶ [0039], line 5.

Claim 2 depends on claim 1 and adds the limitation that if any of the parameters which are different cannot be dynamically changed, updating all parameters to those contained in the new configuration file by rebooting the system, *See, e.g.*, Application at 17, ¶ [0037], line 8- Application at 18, ¶ [0037], line 1 and Application at 18, ¶ [0038], lines 5-7.

Claim 3 depends on claim 1 and adds the limitation that said hub comprises a configuration update module and a plurality of other functional modules which use parameters contained in the configuration file, *See, e.g.*, Application at 9, ¶ [0016], lines 8-15, Application at 15, ¶ [0034], line 1 - Application at 16, ¶ [0034], line 1, and Application at 16, ¶ [0035], lines 9-11, said other functional modules register check and update function calls with said update module, *See, e.g.*, Application at 16, ¶ [0035], lines 2-9, said update module writes the new configuration file into flash memory and issues a check function call to each of the other

functional modules, *See, e.g.*, Application at 17, ¶ [0036], lines 9-10 and lines 14-15, and each functional module compares configuration file parameters in the new configuration file to its existing parameters, and notifies the update module whether the parameters which are different can be changed dynamically, *See, e.g.*, Application at 17, ¶ [0037], lines 2-8.

Claim 4 depends on claim 3 and adds the limitation that if the parameters which are different can be changed dynamically, said update module issues an update function call to each of the other functional modules, *See, e.g.*, Application at 18, ¶ [0039], lines 1-5.

Claim 5 depends on claim 3 and adds the limitation that if the parameters which are different cannot all be changed dynamically, said update module reboots the system, *See, e.g.*, Application at 18, ¶ [0038], lines 5-7.

Claim 6 depends on claim 1 and adds the limitation that said step of updating parameters is performed when said customer premises telecommunications hub is in an idle state, *See, e.g.*, Application at 18, ¶ [0040], line 1 -Application at 19, ¶ [0040], line 2.

Claim 7 depends on claim 1 and adds the limitation that said new configuration file is received over a wide area network connection in Internet protocol, *See, e.g.*, Application at 7, ¶ [0012], lines 1-6.

Claim 8 depends on claim 1 and adds the limitation that said new configuration file is received over a DSL connection to a server in a central office, *See, e.g.*, Application at 10, ¶ [0020], line 1 - Application at 11, ¶ [0020], line 4.

Claim 9 is independent and is directed to a customer premises telecommunications hub, comprising: a wide area network connection for receiving Internet protocol messages, *See, e.g.*, Application at 7, ¶ [0012], lines 1-6, a memory storing a configuration file, *See, e.g.*, Application at 9, ¶ [0016], lines 4-5 and Application at 17, ¶ [0036], lines 9-10, a microprocessor having a plurality of functional program modules operating with parameters contained in the configuration file, each functional module storing configuration file parameters which affect its operations and having a check function and an update function, *See, e.g.*, Application at 9, ¶ [0016], lines 2-17, Application at 15, ¶ [0034], lines 1-2, Application at 17, ¶ [0037], lines 2-5, Application at 18, ¶ [0039], lines 2-5, and Application at 16, ¶ [0035], lines 2-6, and a configuration update module adapted to receive a new configuration file over the wide area network connection while the microprocessor is in a running state, to store the new configuration file in memory, and to call the check function and the update function in each functional module, *See, e.g.*, Application at 17, ¶ [0037], lines 4-10 and lines 14-15, Application at 14, ¶ [0032], line 11 - Application at 15, ¶ [0032], line 1 and Application at 18, ¶ [0039], lines 1-2.

Claim 10 is independent and is directed to a system for dynamically updating configuration file parameters in a customer premises telecommunications hub comprising: a remotely located configuration server accessible over a wide area network connection, *See, e.g.*, Application at 13, ¶ [0026], lines 2-5, means for receiving a new configuration file from said configuration file server over a wide area network connection while the customer premises telecommunications hub is in running state, *See, e.g.*, Application at 17, ¶ [0036], lines 1-10, means for comparing parameters controlling operation of the customer premises telecommunications hub to parameters contained in the new configuration file and identifying

parameters which are different, *See, e.g.*, Application at 17, ¶ [0037], lines 4-5, means for identifying parameters which can be changed dynamically, *See, e.g.*, Application at 17, ¶ [0037], lines 5-7, means for, if all parameters which are different can be changed dynamically, dynamically updating parameters to those contained in the new configuration file, *See, e.g.*, Application at 18, ¶ [0039], lines 1-5.

Claim 11 depends on claim 10 and adds the limitation of a means for, if any parameter which is different cannot be changed dynamically, causing the customer premises telecommunications hub to reboot, *See, e.g.*, Application at 18, ¶ [0038], lines 5-7.

Claim 12 depends on claim 10 and adds the limitation of a means for dynamically updating parameters to those contained in the new configuration file only when the customer premises telecommunications hub is in idle state, *See, e.g.*, Application at 18, ¶ [0040], lines 1-4.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 9, 10, and 12 are anticipated under 35 U.S.C. § 102(b) by Lenz (U.S. Patent 6,029,196) (hereinafter *Lenz*).
2. Whether claims 1, 6, and 7 are unpatentable under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of Fletcher et al. (U.S. Patent 6,009,274) (hereinafter *Fletcher*).
3. Whether claims 2-5 and 11 are unpatentable under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher* and further in view of Sandahl et al. (U.S. Patent 6,098,098) (hereinafter *Sandahl*).
4. Whether claim 8 is unpatentable under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher* and further in view of Kaplan et al. (U.S. Patent 6,141,339) (hereinafter *Kaplan*).

VII. ARGUMENT

All of the claims were rejected over *Lenz* or *Lenz* in view of one or more secondary references. *Lenz* discloses an automatic client configuration system. A client may contact a server at startup for configuration information. The server may return the configuration file that is used by the client to configure the client system. Upon receiving the configuration file, the client executes it to configure various aspects of the client (FIGS. 1-7; column 3, lines 11-12, 23-24). Also, the server may query the client for information such as file version numbers. If the server determines that the client needs file updates, the server sends new files to the client (FIG. 8; column 4, lines 59-64). The client may replace the existing files with the new files sent by the server (column 2, lines 15-17). *Lenz* does not disclose a customer premises telecommunication hub, identifying parameters within the configuration file that are different from locally stored parameters, or determining whether each of the changed parameters can be dynamically changed. None of the secondary references cure the deficiencies of *Lenz*.

The Examiner has failed to establish a *prima facie* case of anticipation with respect to claim 9. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). *Lenz* does not disclose each and every element set forth in independent claim 9.

The Examiner has failed to establish a *prima facie* case of anticipation with respect to claims 10 and 12 because *Lenz* does not disclose each and every element set forth in claim 10. Dependent claim 12 was rejected under 35 U.S.C. § 102(b) as being anticipated by *Lenz*. Claim 12 depends from claim 10 and incorporates all of the limitations thereof. Accordingly, *Lenz* does not disclose each and every element set forth in claim 12 because *Lenz* does not disclose each and every element set forth in independent claim 10.

The Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 1-8 because *Lenz* in view of *Fletcher* does not teach or suggest all of the elements of independent claim 1. As noted by the United States Supreme Court in *Graham v. John Deere Co. of Kansas City*, an obviousness determination begins with a finding that “the prior art as a whole in one form or another contains all” of the elements of the claimed invention. See *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 22 (U.S. 1966). Dependent claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher*. Dependent claims 2-5 were rejected under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher* and further in view of *Sandahl*. Dependent claim 8 was rejected under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher* and further in view of *Kaplan*. Dependent claims 2-8 depend directly or indirectly from independent claim 1 and incorporate all of the limitations thereof. Accordingly, none of the combinations of applied art teach or suggest all of the claim elements set forth in dependent claims 2-8 because *Lenz* in view of *Fletcher* does not teach or suggest all of the claim elements set forth in independent claim 1.

The Examiner has failed to establish a *prima facie* case of obviousness with respect to dependent claim 11. Dependent claim 11 was rejected under 35 U.S.C. § 103(a) as obvious over *Lenz* in view of *Fletcher* and further in view of *Sandahl*. Dependent claim 11 depends directly or indirectly from independent claim 10 and incorporates all of the limitations thereof. Accordingly, *Lenz* in view of *Fletcher* and in further view of *Sandahl* does not teach or suggest all of the claim elements set forth in dependent claim 11 because *Lenz* does not disclose each and every element set forth in independent claim 10.

A. 35 U.S.C. § 102 Rejections

1. Claim 9

a. Claim 9 was wrongly rejected because *Lenz* does not disclose a customer premises telecommunications hub

In the response filed on April 24, 2007, Appellants argued that the client of *Lenz* is not a customer premises telecommunications hub. The Final Office Action responded to this argument in section (A) of the Response to Arguments section. In section (A), the Final Office Action appears to interpret the disclosure of *Lenz* that because there is communication between the client and the server then the presence of a communications hub is inherent to the client. The Advisory Action dated September 20, 2007 simply repeats the argument found in section (A) of the Final Office Action. While some sort of communications means, such as an RJ-11 (telephone) **jack** or an Ethernet **port**, may be inherent to the client of *Lenz*, Appellants submit that the presence of a communications **hub** is not inherent to the client of *Lenz*. Further, *Lenz* does not disclose that the communication means between the client and the server is disclosed to have the other limitations of Claim 9. For example, *Lenz* does not disclose that the means for communicating between the client and the server has a wide area network connection, a memory, a microprocessor, and a configuration update module as claimed.

In a telephone interview on October 23, 2007 Appellants presented arguments that the claimed customer premises telecommunications hub is not inherent in the client of *Lenz*. The Examiner responded to those arguments by indicating that even if the claimed customer premises telecommunications hub is not inherent to the client of *Lenz*, based on the definition of the term “hub,” the server may be broadly interpreted as a customer premises telecommunications hub. Appellants respectfully submit that the server of *Lenz* does not disclose the other limitations of claim 9. For example, the server of *Lenz* is not disclosed to have the claimed plurality of functional program modules, each storing configuration file parameters which affect its operations and having a check function and an update function.

Further, the server of *Lenz* is not disclosed to have a configuration update module adapted to call the check function and the update function in each functional module.

Appellants note that *Lenz* does not directly disclose that the client is a customer premises telecommunications hub. MPEP 706.02(IV) indicates that for rejections under 35 U.S.C. 102, "Any feature not directly taught must be inherently present." Further, MPEP 2163.07(a) notes, "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is **necessarily present** in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (emphasis added). In other words, unstated elements in a reference are inherent when they exist as a "matter of scientific fact." *Constant v. Advanced Micro Devices, Inc.*, 848 F.2d 1560, 7 U.S.P.Q.2d 1057 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988) and *Hughes Aircraft Co. v. United States*, 8 U.S.P.Q.2d 1580 (Ct. Cl. 1988).

Also, MPEP 2173.05(a)(III) states:

"In applying the prior art, the claims should be construed to encompass all definitions that are consistent with Appellant's use of the term. See *Tex. Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202, 64 USPQ2d 1812, 1818 (Fed. Cir. 2002). It is appropriate to compare the meaning of terms given in technical dictionaries in order to ascertain the accepted meaning of a term in the art. In re Barr, 444 F.2d 588, 170 USPQ 330 (CCPA 1971). >See also MPEP § 2111.01.<"

The Federal Standard 1037C Glossary of Telecommunications Terms defines the term "hub" as "a device that accepts a signal from one point and redistributes it to one or more points." Also, the website Whatis.com provides a common definition of the term "hub" as "a place of convergence where data arrives from one or more directions and is forwarded out in one or more other directions." While the client of *Lenz* is disclosed to receive data from the server, *Lenz* does

not provide any disclosure that the client then redistributes or forwards the data on to one or more points or in one or more directions. Appellants note that while the client of *Lenz* is also disclosed to be able to send data to the server, this is not disclosure of redistributing or forwarding data that has arrived at the client to the server. For example, the server may send data to the client, the client may process the data and respond or initiate a request with different data, however, the client of *Lenz* does not redistribute or forward the same data back to the server. Therefore it is clear that the client of *Lenz* is not a "hub," much less a customer premises telecommunications hub as claimed. Further, Appellants respectfully submit that a hub is not necessarily present in *Lenz*, nor is it a matter of scientific fact that the client of *Lenz* is a hub. For additional clarity, Appellants note that a term that is commonly used today that may describe the customer premises telecommunications hub is "residential gateway."

Further, regarding the claim limitation "customer premises," Appellants note that *Lenz* does not directly disclose that the client is a **customer premises** client. A search of *Lenz* did not result in any disclosure of a **customer premises**. Appellants respectfully submit that it is not necessarily present or a matter of scientific fact that the client of *Lenz* is a **customer premises** client.

b. Claim 9 was wrongly rejected because *Lenz* does not disclose a plurality of functional program modules operating with parameters contained in the configuration file.

Claim 9 recites, "a customer premises telecommunications hub, comprising ... a microprocessor having a plurality of functional program modules operating with parameters contained in the configuration file, each functional program module storing configuration file parameters which affect its operations." As described in paragraph 0016 of the pending disclosure, the functional program modules may include a control module 51 that controls the

telephony functions, an Ethernet control module 67, and ATM control module 55 that controls the communications with the network, for example.

The Final Office Action relied on Fig. 4 of *Lenz* to teach the cited limitations claimed in claim 9. Appellants respectfully submit that the cited portions of *Lenz* do not disclose that the client 401 has a plurality of functional program modules. In the Response to the Final Office Action dated August 31, 2007, Appellants requested that particular structures of Fig. 4 or citations of descriptions of Fig. 4 that are being interpreted as the claimed plurality of functional program modules be particularly pointed out. The Advisory Action dated September 20, 2007 did not provide any such identification of particular structures or descriptions of *Lenz*. Appellants respectfully submit that *Lenz* does not disclose a configuration file stored at the client 401 where a plurality of functional program modules operate with parameters contained in the configuration file. Still further, Appellants respectfully submit that *Lenz* does not disclose that each of the functional program modules store parameters of the configuration file that affect their operations.

c. Claim 9 was wrongly rejected because *Lenz* does not disclose a check function.

Claim 9 recites, "a plurality of functional program modules ..., each functional module ... having a check function" and, "a configuration update module adapted ... to call the check function ... in each functional module." Paragraph 0037 of the pending application discloses that the check function determines whether any parameters which affect a functional module have been changed and, for each parameter that has been changed, the check function further determines whether the parameter can be changed dynamically or requires a reboot of the hub.

The Final Office Action relied on Fig. 4 and Fig. 12 of *Lenz* to teach the limitations claimed in claim 9. As discussed in column 3, lines 40-55, Fig. 4 of *Lenz* discloses an

embodiment where a client 401 may request remotely stored configuration settings through LDAP commands on the JSC file 403. The request may include a user's E-mail address that may be passed to the LDAP server 405 as a key to request a given user's settings. Information returned from the LDAP server 405 may include other settings, such as the user's mail server name. This embodiment is a more specific example of the other embodiments of *Lenz* that disclose for a client to request configuration information from a server, the server returns the configuration information corresponding to the requesting client, and the client executes the returned configuration information to configure various aspects of the client.

Fig. 12 of *Lenz* and column 5, line 62- column 6, line 10 describes the functionality of the server. The process in column 5, line 62 - column 6, line 3 describes the functions performed on the server to retrieve the appropriate configuration information based on a client request for configuration information and to send the retrieved configuration information to the client. Appellants respectfully submit that disclosure of functionality provided by the server of *Lenz* does not provide any disclosure of the limitations of the customer premises telecommunications hub claimed in Claim 9.

Appellants respectfully submit that the cited portions of *Lenz* do not disclose any function to determine whether any parameters within a configuration file have changed. *Lenz* simply executes the returned configuration information without any check of whether there are changes in individual parameters of the returned configuration information. Further, since there isn't any disclosure of checking whether individual parameters of the configuration information have changed then there is also no disclosure of determining whether parameters that have been changed require a reboot.

d. Claim 9 was wrongly rejected because *Lenz* does not disclose an update function.

Claim 9 recites, "a plurality of functional program modules ..., each functional module ... having an update function" and, "a configuration update module adapted ... to call the ... update function in each functional module." Paragraph 0039 of the pending application discloses that the update function reads configuration parameters from the new configuration file which affect the functional module and stores a local copy of the new parameters. The updated functional module operates with the new parameters.

The Final Office Action again relied on Fig. 4 and Fig. 12 of *Lenz* to teach the limitations claimed in claim 9. Appellants respectfully submit that Figs. 4 and 12 and their corresponding description in *Lenz* do not disclose any function to copy parameters from the returned configuration information that affect a functional module and store a copy of the new parameters local to the functional module such that the functional module operates with the new parameters.

e. Claim 9 was wrongly rejected because *Lenz* does not disclose a configuration update module.

Claim 9 recites, "a customer premises telecommunications hub, comprising ... a configuration update module adapted to receive a new configuration file ... and to call the check function and the update function in each functional module."

The Final Office Action relied on the disclosure of Fig. 12 of *Lenz* to read on the cited claim limitations of claim 9. As noted above, Fig. 12 shows the processes that may be performed by the server. In contrast, the limitations of the configuration update module are recited as part of the claimed customer premises telecommunications hub, which the Final Office Action has interpreted as the client in the disclosure of *Lenz*. It is unclear how processes performed on the server may be interpreted as functionality of the client.

Appellants respectfully submit that Fig. 12 and the corresponding description in *Lenz* do not disclose that the server calls the check function and the update function as claimed. Further, none of the processes of Fig. 12 call any functions to "each functional module" as claimed. Appellants respectfully submit that the client of *Lenz* described in conjunction with Fig. 4 also does not provide any disclosure of the claimed configuration update module.

f. Claim 9 was wrongly rejected because *Lenz* does not disclose each and every limitation of claim 9.

For at least the reasons established above in sections (A)(1)(a)-(A)(1)(e), Appellants respectfully submit that independent Claim 9 is not disclosed by *Lenz* and respectfully request allowance of this claim.

2. Claims 10 and 12

a. Claim 10 was wrongly rejected because *Lenz* does not disclose a customer premises telecommunications hub.

Appellants respectfully submit that *Lenz* does not disclose a customer premises telecommunications hub. Appellants refer to the argument in section (A)(1)(a) above. For brevity the argument is not repeated here.

b. Claim 10 was wrongly rejected because *Lenz* does not disclose comparing parameters of the hub to parameters in the new configuration file and identifying which parameters are different.

Claim 10 recites, "comparing parameters controlling operation of the customer premises telecommunications hub to parameters contained in the new configuration file and identifying parameters which are different."

In the response filed on April 27, 2007, Appellants argued that *Lenz* does not teach or suggest any step of identifying parameters in a new configuration file that are different from existing parameters stored in a customer premises telecommunications hub. The Final Office

Action responded to this argument in section (B) of the Response to Arguments section. In section (B), the Final Office Action relied on disclosure of the limitations of Claim 1 in Column 6, lines 28-35 of *Lenz*. The Final Office Action summarizes the process of Claim 1 of *Lenz* as updating the old files with the new files. The Final Office Action interprets the updating as inherently identifying parameters in a new file that are different from existing parameters. The Advisory Action dated September 20, 2007 simply repeats the argument found in section (B) of the Final Office Action.

Appellants note that *Lenz* does not directly disclose that parameters of the configuration file received from the server are compared with parameters controlling operation of the client and identifying parameters which are different. *Lenz* only discloses in column 3, lines 11-12 that the configuration file is executed upon receipt.

Appellants respectfully submit that performing a comparison of parameters in the configuration file received from the server with parameters controlling operation of the client and identifying parameters which are different is not necessarily present in *Lenz*. Further, it is not a matter of scientific fact that configuring the client using the configuration file received from the server **has** to perform a comparison of parameters in the configuration file received from the server with parameters controlling operation of the client and identifying parameters which are different. For example, as alluded to in the interpretation provided in the argument of section (B) of the Final Office Action, the configuration file may simply overwrite or swap out the old files with the new files to perform an update without ever performing a comparison or identification of differences as claimed in Claim 10.

c. Claim 10 was wrongly rejected because *Lenz* does not disclose identifying parameters which can be changed dynamically.

Claim 10 recites, "identifying parameters which can be changed dynamically."

In the response filed on April 27, 2007, Appellants argued that *Lenz* does not teach or suggest making any determination of whether parameters may be changed dynamically. The Final Office Action responded to this argument in section (C) of the Response to Arguments section. In section (C), the Final Office Action relied on disclosure in Column 4, lines 28-42 of *Lenz*. The Final Office Action likens the disclosure of an administrator automatically pushing out software updates that he wants to a determination of whether parameters may be changed dynamically. The Advisory Action dated September 20, 2007 simply repeats the argument found in section (C) of the Final Office Action. Appellants respectfully submit that the disclosure cited in section (C) of the Final Office Action merely teaches that an administrator can identify what software to update. *Lenz* does not teach or suggest identifying parameters which can be changed dynamically as required by Claim 10.

The rejection of Claim 10 in the Final Office Action relied on disclosure of column 6, lines 28-29. This disclosure is merely a limitation of Claim 1 of an operation performed on the server. The server identifies a configuration file that is associated with the client. Appellants note that this is an identification of a file, not an identification of parameters within a file. Further, there is no teaching or suggestion of identifying parameters which can be changed dynamically.

As disclosed in paragraph 0037 of the pending application, each parameter used in a module is designated as to whether or not it can be dynamically changed or requires a system reboot. Therefore, some parameters can be dynamically changed and other parameters can not be dynamically changed and require a system reboot. *Lenz* does not provide any such disclosure of some parameters being able to be dynamically changed and others not being able to be dynamically changed. Therefore, *Lenz* does not provide any disclosure of identifying parameters which can be dynamically changed.

- d. Claim 10 was wrongly rejected because *Lenz* does not disclose dynamically updating parameters if all parameters which are different can be dynamically changed.**

In the Final Office Action dated July 13, 2007, the Examiner asserts that *Lenz* teaches means for, if all parameters which are different can be changed dynamically, dynamically updating parameters to those contained in the new configuration file, citing col. 5, lines 41-44.

As noted above in section 2(c), *Lenz* teaches nothing about distinguishing between parameters which can be changed dynamically and those that can be changed only by rebooting. Accordingly, *Lenz* could not teach a step of updating based on such distinction. The cited portion of *Lenz* discusses only the transfer of parameters from the server to the client. It has nothing to do with how the client changes the parameters internally.

While *Lenz* provides a number of teachings concerning transferring parameters and files between a server and a client, *Lenz* does not provide any teachings about how the new parameters or files are actually installed or implemented in the client.

- e. Claim 10 was wrongly rejected because *Lenz* does not disclose conditionally performing a dynamic update of parameters.**

Claim 10 recites, "if all parameters which are different can be changed dynamically, dynamically updating parameters to those contained in the new configuration file." Therefore, Claim 10 requires that the condition be met that all of the parameters that have been identified as different have also been identified as parameters which can be changed dynamically prior to dynamically updating the parameters.

A search of *Lenz* for the term "dynamic" in the detailed description only resulted in discussion related to Fig. 3 in column 3, lines 26-39 and discussion related to Fig. 4 in column 3, lines 40-48. In column 3, lines 40-48, *Lenz* discloses that the JSC file is more flexible with

the addition of LDAP commands that allow set configuration data to be dynamically set rather than statically set. Appellants note that there is no disclosure of any conditions being met prior to dynamically setting configuration data, much less disclosure of a condition that all of the parameters that have been identified as different have also been identified as parameters which can be changed dynamically prior to dynamically updating the parameters.

The condition required by Claim 10 is further emphasized through the limitations of Claim 11, where the other side of this condition is defined as "if any parameter which is different cannot be changed dynamically, causing the customer premises telecommunications hub to reboot."

f. Claims 10 and 12 were wrongly rejected because *Lenz* does not disclose each and every limitation of claim 10.

For at least the reasons established above in sections (A)(2)(a)-(A)(2)(e), Appellants respectfully submit that independent Claim 10 is not disclosed by *Lenz* and respectfully request allowance of this claim.

Dependent Claim 12 depends directly or indirectly from independent Claim 10 and incorporates all of the limitations thereof. Accordingly, for at least the reasons established in sections (A)(2)(a)-(A)(2)(e) above, Appellants respectfully submit that Claim 12 is not disclosed by *Lenz* and respectfully request allowance of this claim.

B. 35 U.S.C. § 103(a) Rejections

1. Claims 1-8.

a. Claim 1 was wrongly rejected for the reasons discussed above.

Claim 1 includes limitations substantially similar to the limitations discussed in sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e) above. Appellants refer to the arguments in sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e) above. For brevity these arguments are not repeated here.

b. The secondary references do not cure the deficiencies of *Lenz*.

The Final Office Action dated July 13, 2007 relied on *Fletcher* to provide disclosure of installing a new version of a software component without rebooting system software. Appellants respectfully submit that this disclosure does not cure the deficiencies of *Lenz* detailed in the arguments of sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e). Further, the Final Office Action dated July 13, 2007 relied on *Sandahl* and *Kaplan* to teach limitations of dependent claims. Appellants respectfully submit that neither *Sandahl* nor *Kaplan* cure the deficiencies of *Lenz* detailed in the arguments of sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e).

c. Claims 1-8 were wrongly rejected because *Lenz* in view of *Fletcher* does not teach or suggest all of the claim elements of claim 1.

For at least the reasons established above in sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e), Appellants respectfully submit that independent Claim 1 is not taught or suggested by *Lenz* in view of *Fletcher* and respectfully request allowance of this claim.

Dependent Claims 2-8 depends directly or indirectly from independent Claim 1 and incorporate all of the limitations thereof. Accordingly, for at least the reasons established in sections (A)(1)(a) and (A)(2)(a)-(A)(2)(e) above, Appellants respectfully submit that Claims 2-8 are not taught or suggested by *Lenz* in view of *Fletcher* and respectfully request allowance of this claim.

2. Claim 11

a. Claim 11 was wrongly rejected because *Lenz* does not disclose each and every limitation of claim 10.

Dependent Claim 11 depends directly or indirectly from independent Claim 10 and incorporates all of the limitations thereof. Accordingly, for at least the reasons established in sections (A)(2)(a)-(A)(2)(e) above, Appellants respectfully submit that Claim 11 is not taught or

suggested by *Lenz* in view of *Fletcher* in further view of *Sandahl* and respectfully request allowance of this claim.

CONCLUSION

In view of the above arguments the Appellants respectfully request that the Final Rejection of the claims be reversed and the case advanced to issue. Should the Examiner feel that a telephone interview would advance prosecution of the present application, the Appellants invite the Examiner to call the attorneys of record.

The Commissioner is hereby authorized to charge payment of any further fees associated with any of the foregoing papers submitted herewith, or to credit any overpayment thereof, to Deposit Account No. 21-0765, of Sprint Communications Company, L.P.

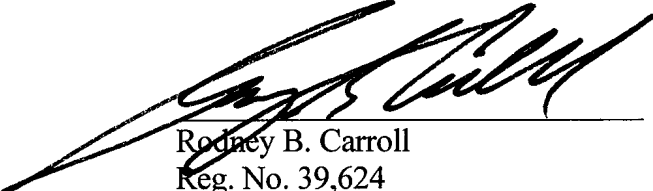
Respectfully submitted,

CONLEY ROSE, P.C.

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VIII. CLAIMS APPENDIX

1. A method for updating configuration parameters in customer premises telecommunications hub comprising:

receiving in a customer premises telecommunications hub a new configuration file sent from a remote location;

identifying parameters in the new configuration file which are different than existing parameters stored in said customer premises telecommunications hub;

checking the parameters which are different to determine whether they can be changed dynamically, and

if all parameters which are different can be dynamically changed, updating all parameters to those contained in the new configuration file without rebooting.

2. A method according to Claim 1, further comprising:

if any of the parameters which are different cannot be dynamically changed, updating all parameters to those contained in the new configuration file by rebooting the system.

3. A method according to Claim 1, wherein:

said hub comprises a configuration update module and a plurality of other functional modules which use parameters contained in the configuration file,

said other functional modules register check and update function calls with said update module,

said update module writes the new configuration file into flash memory and issues a check function call to each of the other functional modules, and

each functional module compares configuration file parameters in the new configuration file to its existing parameters, and notifies the update module whether the parameters which are different can be changed dynamically.

4. A method according to Claim 3, wherein:

if the parameters which are different can be changed dynamically, said update module issues an update function call to each of the other functional modules.

5. A method according to Claim 3, wherein:

if the parameters which are different cannot all be changed dynamically, said update module reboots the system.

6. A method according to Claim 1, wherein:

said step of updating parameters is performed when said customer premises telecommunications hub is in an idle state.

7. A method according to Claim 1, wherein:

said new configuration file is received over a wide area network connection in Internet protocol.

8. A method according to Claim 1, wherein:

said new configuration file is received over a DSL connection to a server in a central office.

9. A customer premises telecommunications hub, comprising:

a wide area network connection for receiving Internet protocol messages,

a memory storing a configuration file,

a microprocessor having a plurality of functional program modules operating with parameters contained in the configuration file, each functional module storing configuration file parameters which affect its operations and having a check function and an update function, and

a configuration update module adapted to receive a new configuration file over the wide area network connection while the microprocessor is in a running state, to store the new configuration file in memory, and to call the check function and the update function in each functional module.

10. A system for dynamically updating configuration file parameters in a customer premises telecommunications hub comprising:

a remotely located configuration server accessible over a wide area network connection,

means for receiving a new configuration file from said configuration file server over a wide area network connection while the customer premises telecommunications hub is in running state,

means for comparing parameters controlling operation of the customer premises telecommunications hub to parameters contained in the new configuration file and identifying parameters which are different,

means for identifying parameters which can be changed dynamically,

means for, if all parameters which are different can be changed dynamically, dynamically updating parameters to those contained in the new configuration file.

11. The system of Claim 10 further comprising:

means for, if any parameter which is different cannot be changed dynamically, causing the customer premises telecommunications hub to reboot.

12. The system of Claim 10 further comprising:

means for dynamically updating parameters to those contained in the new configuration file only when the customer premises telecommunications hub is in idle state.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None